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General Counsel

December 11, 2003

TRA DOCKET ROOM

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VIA HAND DELIVERY

Hon. Deborah Taylor Tate, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *Petition for Arbitration of the Interconnection Agreement Between
BellSouth Telecommunications, Inc. and XO Tennessee, Inc. Pursuant to
Section 252(b) of the Telecommunications Act of 1996*
Docket No. 03-00631

Dear Chairman Tate:

Enclosed are the original and fourteen copies of the *Petition of BellSouth Telecommunications, Inc. for Section 252(b) Arbitration*. Copies of the enclosed are being provided to counsel for XO Tennessee, Inc.

Very truly yours,

Guy M. Hicks

GMH:ch

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

***In Re: Petition for Arbitration of the Interconnection Agreement Between
BellSouth Telecommunications, Inc. and XO Tennessee, Inc., Pursuant
To Section 252(b) of the Telecommunications Act of 1996***

Docket No. _____

**PETITION OF BELL SOUTH TELECOMMUNICATIONS, INC.
FOR SECTION 252(b) ARBITRATION**

Pursuant to Section 252(b) of the Telecommunications Act of 1996 ("1996 Act"), BellSouth Telecommunications, Inc. ("BellSouth") files this Petition for Arbitration seeking resolution of certain issues arising between XO Tennessee, Inc. ("XO") and BellSouth in the negotiation of an Interconnection Agreement. BellSouth states as follows:

I. STATEMENT OF FACTS

1. BellSouth is a corporation organized and existing under the law of the State of Georgia, maintaining its principal place of business at 675 West Peachtree Street, N.E., Atlanta, Fulton County, Georgia. BellSouth is an incumbent local exchange carrier ("ILEC") as defined by 47 U.S.C. § 251(h).

2. Upon BellSouth's best knowledge and belief, XO is certified by the Tennessee Regulatory Authority ("Authority" or "TRA") to provide Competitive Local Exchange Carrier ("CLEC") services.

3. Pursuant to the 1996 Act, BellSouth is required to provide (through negotiation or otherwise) interconnection for the equipment and facilities of a requesting telecommunications carrier with its network. *See* 47 U.S.C. §

251(c)(2). The terms of interconnection must comply with the provisions of Section 251(b) of the 1996 Act. BellSouth, as an ILEC, is also required to provide interconnection in compliance with the provisions of Section 251 (c) of the 1996 Act.

4. Under the provisions of Section 252(d), BellSouth must provide interconnection and network elements at rates that are cost based and non-discriminatory. The rates BellSouth charges may include a reasonable profit.

5. Pursuant to its obligations under Section 251(c)(1) of the 1996 Act, BellSouth has attempted to negotiate the terms and conditions of a new Interconnection Agreement with XO. As described in greater detail below, however, XO has refused to participate in good faith negotiations with BellSouth to accomplish the renegotiation of the Interconnection Agreement between the parties.

II. JURISDICTION OF THE AUTHORITY

6. Pursuant to Section 252(b)(1) of the 1996 Act, which allows either party to the negotiation to request arbitration, this Authority is empowered to arbitrate any and all unresolved issues regarding XO's interconnection with BellSouth's network. BellSouth's Petition is filed with the Authority between the 135th and 160th day from the date that negotiations were deemed to have commenced.

7. The Federal Communications Commission ("FCC") established the appropriate standard for arbitration under Sections 251 and 252 of the 1996 Act in its First Report and Order, Implementation of the Local Competition provisions of

the Telecommunications Act of 1996, CC Docket No. 96-98. Pursuant to the FCC's First Report and Order, this Authority must do the following in an arbitration:

- a. ensure resolution and conditions satisfying Section 251, including regulations promulgated by the FCC; and
- b. establish rates for interconnection services or network elements according to Section 252(d).

III. ISSUES FOR RESOLUTION BY THE AUTHORITY

8. XO's Interconnection Agreement with BellSouth was originally set to expire on November 3, 2002. In the early stages of negotiations for a new agreement, BellSouth redlined an arbitrated Interconnection Agreement between BellSouth and XO that was in effect for Florida, beginning in October 2002, and submitted it to XO as a starting point for negotiations. XO originally agreed to use the Florida redlined agreement as a starting point, but then subsequently refused to do so. Shortly thereafter, XO demanded that, rather than negotiating a new agreement, the agreement in effect at that time be extended until December 31, 2003. BellSouth agreed, and the Interconnection Agreement was extended as requested.

9. On July 3, 2003, BellSouth again sent to XO a letter requesting that negotiations begin. XO's response was that it wanted to again extend the Agreement in place. BellSouth declined to extend the current agreement, and instead reiterated its request that XO negotiate a new agreement. The Agreement between XO and BellSouth (that will expire in approximately three weeks) was

based on a standard agreement that was originally drafted in February of 1998. In other words, it is almost six years old. In the intervening years, BellSouth's standard agreement has been changed to reflect both changes in the law and changes in the interconnection practices that currently pertain. Thus, when BellSouth begins any negotiation, its standard practice is to do so from the current standard agreement, rather than from pre-existing agreements between the parties that are outdated, or even obsolete in many regards. BellSouth has taken the same position with XO in this regard as it has with every other CLEC that has requested negotiations.

10. XO appeared to understand BellSouth's position, and requested that it be sent a copy of the Interconnection Agreement with Network Telephone to review as a possible starting point. This Interconnection Agreement was sent to XO on July 17. XO did not communicate with BellSouth again until October 1, 2003, despite BellSouth's repeated attempts to contact XO to begin negotiations during this two and a half month period. When XO finally responded to BellSouth on October 1, 2003, it stated that it refused to use the Network Telephone Agreement as a starting point, and reiterated that it would not use the BellSouth Standard Agreement for this purpose either.

11. XO generally took the position throughout the last several months that it would not negotiate from any agreement other than the existing Agreement. However, XO also demanded at one point that it be provided with draft versions of proposed agreements with other CLECs that had not been reduced to final Agreements, and that one of these be used as a starting point. Since these drafts

were not finalized agreements, BellSouth was not able to agree to this proposal for obvious reasons. XO recently stated that it would negotiate from one of the agreements that it had entered into with BellSouth from another state, but it refused to accept the Florida multi-state agreement (which had already been redlined and submitted to XO), and instead demanded that it be provided with a redlined copy of the almost identical Georgia version.

12. Despite these many efforts to delay and obfuscate by XO, BellSouth was still willing to attempt to negotiate terms with XO as late as earlier this week, but XO continued in its recalcitrant refusal to negotiate. In one of the latest instances, BellSouth provided to XO a proposed amendment to the Agreement to take into account changes from the FCC's Triennial Review Order. XO rejected this amendment and, instead, demanded that this amendment be provided to it in a different form. Finally, when BellSouth offered to extend the negotiation period for an additional ninety days (which would mean that the arbitration window would close on March 6, 2003) so that negotiations could continue, XO rejected this proposal and demanded, in effect, that the extension be ninety days from the future date at which BellSouth supplies all documentation requested by XO in a manner that XO deems appropriate.

13. In essence, XO has made no good faith effort to negotiate whatsoever. Instead, it has simply engaged in a pattern of delaying tactics that appears calculated to force the extension of the current agreement by refusing to negotiate a new one. Since the passage of the 1996 Telecommunications Act, BellSouth has negotiated hundreds, if not thousands, of agreements. In some

instances, negotiations are more fruitful than others, but in every instance in which an arbitration has been necessary, BellSouth has been able to obtain sufficient cooperation from the CLEC in question to at least frame issues for the arbitration. XO's recalcitrant conduct has culminated in perhaps the first instance ever in which BellSouth has been forced to file for arbitration after the CLEC has so completely refused to negotiate that BellSouth cannot identify a single issue that needs to be arbitrated. Throughout the many months in which BellSouth has attempted to negotiate with XO, XO has not identified a single substantive issue. Although XO has refused to accept the BellSouth Standard Agreement even as a starting point for negotiations, it has cited to no provision in that Agreement whatsoever that it finds unacceptable from a substantive standpoint. Thus, XO has succeeded in grinding the negotiations to a halt, and placing the parties at an impasse.

14. The current Interconnection Agreement is set to expire on December 31, 2003. The current Agreement contemplates that it will be extended if the parties continue to negotiate, or if an arbitration is pending. XO has consistently refused to negotiate, and its refusal has created a situation in which there are no issues to arbitrate. At the same time, BellSouth is aware of the fact that the Authority would likely take issue with BellSouth invoking its rights under the contract and simply terminating service to XO at the end of the year (when the Agreement expires), since this would inevitably lead to some customers being without service. This unique circumstance has placed BellSouth in the quandary of

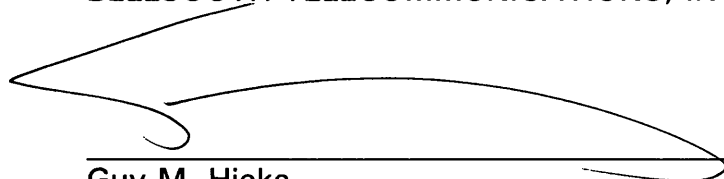
requiring the Authority's involvement to move forward, even though there are no substantive issues that are ripe for arbitration at this point.

15. For all of the above-stated reasons, BellSouth requests that the Authority resolve this situation to break the impasse created by XO. To do so, BellSouth requests that the Authority do one of three things: 1) require that XO adopt the Standard Interconnection Agreement proposed by BellSouth (which BellSouth will provide to the Authority upon request); 2) if XO refuses to accept this Agreement, and further refuses to negotiate in good faith, enter an Order allowing BellSouth to begin the process of terminating service under the current Agreement with XO, or 3) enter an Order instructing XO to engage in good faith negotiations within an abbreviated time frame, and placing sanctions upon XO if it continues to refuse to do so.

WHEREFORE, BellSouth respectfully requests the entry of an Order granting one of the alternative forms of relief set forth above.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

A large, stylized handwritten signature in black ink, appearing to be 'Guy M. Hicks', written over a horizontal line.

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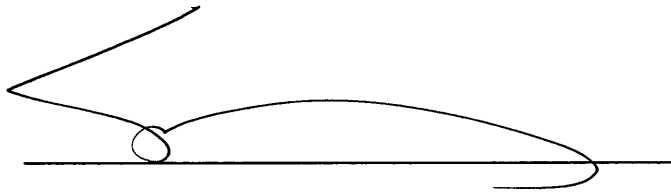
R. Douglas Lackey
J. Phillip Carver
675 West Peachtree St., NE, Suite 4300
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CERTIFICATE OF SERVICE

I hereby certify that on December 11, 2003, a copy of the foregoing document was served on the parties of record, via the method indicated:

- ☐ Hand
- ☐ Mail
- ☐ Facsimile
- ☐ Overnight
- ☒ Electronic

Henry Walker, Esquire
Boult, Cummings, et al.
414 Union Street, #1600
Nashville, TN 37219-8062

A handwritten signature in black ink, appearing to read "Henry Walker", is written over a horizontal line. The signature is stylized with a large loop and a long horizontal stroke.